IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2230 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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SURESKUMAR MAKHANSING PRAJAPATI
Versus
THE STATE OF GUJARAT

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Appearance :
MR JB PARDIWALA for the Appellant
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for the Opponent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 08/12/2006

ORAL JUDGMENT

1. **ADMIT**. Mr.H.L.Jani, learned Additional Public Prosecutor waives process of admission on behalf of the opponent.

2. Appellant – original accused is before this Court being aggrieved by judgment and order dated 19.10.2006 passed by the learned Additional Sessions Judge, Valsad in Sessions Case No.18 of 2006, whereby the learned Additional Sessions Judge is pleased to convict the appellant for an offence under Section 366(A) of the Indian Penal Code and has awarded 5 years imprisonment, fine of Rs.1,000/- and in default, 1 month's S.I.

3. Mr.J.B.Pardiwala, learned advocate for the appellant successfully pointed out to the Court that the learned Additional Sessions Judge did not comply with a mandatory obligation under Sub-section (2) of Section 6 of the Probation of Offenders Act, 1958 ("the Act", for short). For ready reference relevant part of the same is reproduced:

> ".... **the Court shall call for a report from the probation officer and consider the report**....."

4. Mr.Pardiwala, learned advocate for the appellant invited attention of this Court to a decision of the Hon'ble the Apex Court in the matter of **DARSHAN KUMAR VS. SECRETARY, MUNICIPAL CORPORATION, JABALPUR**, reported in AIR 1973 SC 906. The same reads as under:

> "After hearing counsel for the parties the following order must be made in this case in view of the

decision of this Court in 1964 (7) SCR 676 = (1965 (1) Cri LJ 360) when the birth certificate produced shows that the appellant was below 21 years of age at the time of the commission of the offence :-

"The order of the High Court is set aside and the High Court is directed to make an order under Section 6 of the Probation of Offenders Act, 1958 and if it so desires remand the case to the Sessions Court or the trial Court for doing so. The appeal shall stand allowed accordingly. The appellant who was released on bail by this Court can apply to the High Court now for being released on bail."

Ordered accordingly."

In the present case, it is nobody's case that the present appellant – accused was more than 21 years of age. The record shows that he was aged only 19 years at the time of incident. In view of that, compliance of Sub-section (2) of Section 6 of the Act is obligatory. Absence thereof causes miscarriage of justice. This Court is of considered opinion that the ends of justice will be served if a direction is given to the learned Additional Sessions Judge to comply the same.

5. In view of the decision of the Hon'ble the Apex Court, if this course of action is followed, it will serve ends of justice. Hence, this Appeal is allowed on this limited ground without touching the merits of the

case. The matter is remanded to the Court of the learned Additional Sessions Judge, Valsad to comply with the provisions of Sub-section (2) of Section 6 of the Act.

The learned Additional Sessions Judge, Valsad is directed to call for the report of Probation Officer and consider the same as required under Sub-section (2) of Section 6 of the Probation of Offenders Act, 1958 in accordance with law.

At the request of the learned advocate for the appellant, it is clarified that after the learned Additional Sessions Judge passes an order afresh, it will be open for the appellant to file an Appeal, if so required. Th present Appeal will not be a bar to challenge the order if so required, as this Court has not examined the merits of the case.

(RAVI R.TRIPATHI, J.)

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